

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

~~~~~

MICHAEL GRAHAM,

Plaintiff,

vs.

Case No. 1:06CV2091

BEST BUY STORES, L.P., et al.,

Defendants.

~~~~~

Deposition of  
PETER GAUTHIER

April 4, 2007

10:46 a.m.

Taken at:

Lorain County Justice Center  
225 Court Street, Third Floor  
Elyria, Ohio

Todd L. Persson, Notary Public

EXHIBIT

tabbies

G

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Schuster &amp; Simmons Co., LPA, by</p> <p>5 NANCY C. SCHUSTER</p> <p>6 The Bevelin House</p> <p>7 2913 Clinton Avenue</p> <p>8 Cleveland, OH 44113</p> <p>9 (216) 348-1100</p> <p>10 ss@apk.net</p> <p>11</p> <p>12 On behalf of the Defendant:</p> <p>13 Vorys, Sater, Seymour and Pease,</p> <p>14 LLP, by</p> <p>15 MATTHEW D. BESSER, ESQ.</p> <p>16 DAVID CAMPBELL, ESQ.</p> <p>17 2100 One Cleveland, Center</p> <p>18 1375 East Ninth Street</p> <p>19 Cleveland, OH 44114</p> <p>20 (216) 479-6100</p> <p>21 mdbesser@vssp.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION OF 5 6</p> <p>4 PETER GAUTHIER</p> <p>5 BY MR. CAMPBELL</p> <p>6 EXAMINATION OF 53 11</p> <p>7 PETER GAUTHIER</p> <p>8 BY MS. SCHUSTER</p> <p>9</p> <p>10 Exhibit 1 was marked 14 20</p> <p>11 Exhibit 2 was marked 26 3</p> <p>12 Exhibit 4 was marked 55 19</p> <p>13 Exhibits 5 and 6 56 8</p> <p>14 were marked</p> <p>15 Exhibit 3 was marked 57 21</p> <p>16 Exhibit 8 was marked 120 20</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1 APPEARANCES, Continued:</p> <p>2</p> <p>3 On Behalf of the Witness:</p> <p>4 Office of Lorain County Prosecutor,</p> <p>5 by</p> <p>6 M. ROBERT FLANAGAN, ESQ.</p> <p>7 Lorain County Justice Center</p> <p>8 225 Court Street, Third Floor</p> <p>9 Elyria, OH 44035</p> <p>10 (440) 329-5454</p> <p>11 ~ ~ ~ ~ ~</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PETER GAUTHIER, of lawful age,</p> <p>2 called for examination, as provided by the</p> <p>3 Federal Rules of Civil Procedure, being by me</p> <p>4 first duly sworn, as hereinafter certified,</p> <p>5 deposed and said as follows:</p> <p>6 EXAMINATION OF PETER GAUTHIER</p> <p>7 BY MR. CAMPBELL:</p> <p>8 Q. Could you please state your name</p> <p>9 for the record?</p> <p>10 A. Peter, Gauthier. G-a-u-t-h-i-e-r. 10:46:39</p> <p>11 Q. And I'm sure you've taken many</p> <p>12 depositions, and I don't know if you've been</p> <p>13 through many, but --</p> <p>14 A. I've never taken a deposition in my</p> <p>15 entire life. 10:46:56</p> <p>16 Q. Really. Okay. Well, I'll give you</p> <p>17 a little bit of the ground rules. And I</p> <p>18 introduced myself briefly before the</p> <p>19 deposition. I'm David Campbell. This is my</p> <p>20 colleague, Matt Besser. We're both with the 10:47:04</p> <p>21 Vorys Sater law firm in Cleveland, Ohio. We</p> <p>22 are representing Best Buy in a lawsuit filed by</p> <p>23 Michael Graham. It arises out of his</p> <p>24 employment, which has really no relation at all</p> <p>25 to you or your office. But there is also an 10:47:19</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 38</p> <p>1 believe, the Macedonia Best Buy store. I'm not                  2 positive of that. And that person also looked                  3 at the video and said that looks like                  4 Mr. Graham.                  5 And he had -- the photos that are 11:19:04                  6 indicated in the discovery that we talked about                  7 a few minutes ago, those were photos that                  8 Mr. Collins had gotten some photos from the                  9 Macedonia store that contained pictures of                  10 Mr. Graham. And I forget whether they were 11:19:17                  11 from a Hawaiian party or a Halloween party, or                  12 there was some party that the employees of that                  13 particular Best Buy had. Mr. Graham was in                  14 those photos. Mr. Collins got those photos and                  15 showed them to someone who worked at the Elyria 11:19:32                  16 Best Buy, which is the victim in this                  17 particular theft, and that person indicated                  18 that they recognized that person in that photo.                  19 Mr. Graham, as being in the store on the day of                  20 the theft. 11:19:46                  21 Q. Okay.                  22 A. In addition to the fact that                  23 Mr. Graham had been fired recently from Best                  24 Buy, I think three weeks previously. And in                  25 addition to the fact that he was an assistant 11:19:56</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. SCHUSTER: Objection.                  2 Q. Was there any support to her --                  3 based on your independent review of the file,                  4 was there any support to defense counsel's                  5 claim? 11:21:04                  6 MS. SCHUSTER: Objection.                  7 A. I never saw a copy of the EEOC                  8 complaint. I didn't know when it was filed. I                  9 didn't know if it was filed. I knew what I had                  10 in front of me. 11:21:14                  11 Q. And what was in front of you showed                  12 that they could reasonably believe it was                  13 Mr. Graham?                  14 MS. SCHUSTER: Objection.                  15 A. Let me answer this question in that 11:21:19                  16 way. As a prosecutor, I have to evaluate files                  17 when I get them. If I -- my first duty, if you                  18 look at any book about what a prosecutor's                  19 duties are, my first duty is to do justice. In                  20 15-plus years, okay, I have never, I personally 11:21:35                  21 have never prosecuted somebody I felt was                  22 innocent or that I could not sustain a                  23 conviction beyond a reasonable doubt, okay? If                  24 I go forward with a case, therefore I must                  25 believe I can win that case. It applies to 11:21:52</p>
<p style="text-align: right;">Page 39</p> <p>1 manager and would have had access to the keys.                  2 And unfortunately, apparently there's only                  3 three types of keys for all these registers,                  4 which I just thought was crazy.                  5 So all those things together. 11:20:09                  6 Mr. Collins, the Macedonia employee, the                  7 employee from Elyria Best Buy, the fact that he                  8 had recently been fired, the fact that he was                  9 an assistant manager and would have had access                  10 to the keys: all of those things went into my 11:20:18                  11 evaluation of the file.                  12 Q. Okay. What was your conclusion as                  13 to your evaluation of the file?                  14 A. I thought he was guilty.                  15 MS. SCHUSTER: Objection. I ask 11:20:29                  16 that his so-called conclusion be stricken.                  17 Q. And let me move forward. As to                  18 Best Buy, there was an allegation from defense                  19 counsel that Best Buy may have had improper                  20 motives for bringing this criminal matter 11:20:48                  21 against Mr. Graham.                  22 A. Correct.                  23 Q. Did you, through your evaluation,                  24 did you reach any conclusions as to Best Buy's                  25 motives? 11:20:55</p>	<p style="text-align: right;">Page 41</p> <p>1 Mr. Graham, it applies to Joe Schmo down the                  2 street, it applies to every case I have. If I                  3 don't believe I can win that case, then I don't                  4 proceed with it, period. If I believe I can                  5 win it, then I proceed with it. That's just 11:22:06                  6 for every case, period.                  7 Q. And so you believed you could win                  8 the Graham case?                  9 A. Based on the information I had in                  10 the file, yes. 11:22:14                  11 Q. What ultimately happened in the                  12 Graham case?                  13 A. Ms. Murel provided me with those                  14 two names. And one of them was Kirby,                  15 K-i-r-b-y. Wadell, W-a-d-e-l-l. I believe the 11:22:27                  16 second name was Thurman Knox. K-n-o-x.                  17 Q. Okay.                  18 A. For some reason Mr. Knox got                  19 knocked out as a possible, whether he was in                  20 prison or something, I'm not sure. And so -- 11:22:40                  21 Q. And just to verify, "knocked out"                  22 meaning there was some clear alibi?                  23 A. There was some reason why he could                  24 not be the possible person responsible for the                  25 Best Buy in Elyria theft. 11:22:52</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Q. Okay.</p> <p>2 A. The focus became on Mr. Wadell.</p> <p>3 Ms. Murel provided me with a name of Detective</p> <p>4 Klein. K-l-e-i-n, from Parma Police Department,</p> <p>5 who had a similar type theft in Parma. Whether 11:23:05</p> <p>6 she got that information from that newspaper</p> <p>7 article, I do not know. But she provided me</p> <p>8 with Detective Klein's name. I started</p> <p>9 contacting Detective Klein as to whether he had</p> <p>10 any video from, or any information on his case. 11:23:22</p> <p>11 I also did some investigation</p> <p>12 myself, for instance, checking to see whether</p> <p>13 Mr. Wadell was or was not incarcerated in some</p> <p>14 facility during this period of time, I think it</p> <p>15 was May 9th. I'm not positive, to see whether 11:23:39</p> <p>16 he was incarcerated someplace, thereby knocking</p> <p>17 him out as a possible suspect. So I undertook</p> <p>18 that myself, and I found out, I believe, that</p> <p>19 he was at least out and about during that</p> <p>20 period of time. 11:23:53</p> <p>21 And eventually I got ahold of</p> <p>22 Detective Klein in Parma, who, you know, agreed</p> <p>23 to -- he said he had the Parma video on his</p> <p>24 computer, and asked if I could send our video</p> <p>25 to him. I did. I had our investigator bring 11:24:06</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. CAMPBELL: Why don't we agree</p> <p>2 that that will be Exhibit 3 when that is given</p> <p>3 to us as a copy, the side-by-side from the</p> <p>4 Parma --</p> <p>5 MS. SCHUSTER: I need to clarify 11:25:20</p> <p>6 something. Is the box that is called Maxell</p> <p>7 that is sitting on the conference table the</p> <p>8 side-by-side video?</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. CAMPBELL: And that's going to 11:25:30</p> <p>11 be Exhibit 3, and they'll give a copy to us</p> <p>12 post deposition, because that's the only one</p> <p>13 they have.</p> <p>14 MS. SCHUSTER: Is this the original</p> <p>15 side-by-side video, the box on the table? 11:25:37</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. CAMPBELL: So can we agree that</p> <p>18 the side-by-side video will be Exhibit 3, it</p> <p>19 will be produced after the deposition?</p> <p>20 MS. SCHUSTER: Correct. 11:25:52</p> <p>21 MR. CAMPBELL: Okay. And we have</p> <p>22 agreement of counsel on Exhibit 3.</p> <p>23 Q. And there's some photos, some still</p> <p>24 photos here on the table. Let me just verify.</p> <p>25 First of all, let me show you this stack, and 11:26:05</p>
<p style="text-align: right;">Page 43</p> <p>1 it to him. He did a video, a side-by-side, and</p> <p>2 the person in the video, quite frankly, could</p> <p>3 have been Mr. Wadell. It could not have been</p> <p>4 also. But there's a possibility that it could</p> <p>5 have been Mr. Graham, for all I know. 11:24:27</p> <p>6 But at that point in time when</p> <p>7 there is a reasonable possibility that it could</p> <p>8 have been somebody else other than Mr. Graham,</p> <p>9 again, it still could have been Mr. Graham, at</p> <p>10 that point in time there was no way I was going 11:24:40</p> <p>11 to prove my case in court beyond a reasonable</p> <p>12 doubt. At that point in time I dismissed the</p> <p>13 case.</p> <p>14 Q. So it was merely on the sight, in</p> <p>15 looking at these two videos that there could 11:24:52</p> <p>16 be, two people looked like the people on these</p> <p>17 videos, I guess?</p> <p>18 A. Yeah.</p> <p>19 Q. Could resemble the people on the</p> <p>20 video? 11:25:03</p> <p>21 A. Correct.</p> <p>22 Q. And just so we're clear, that</p> <p>23 video, the side-by-side, your office will make</p> <p>24 a copy and deliver it to us?</p> <p>25 A. That's correct. 11:25:12</p>	<p style="text-align: right;">Page 45</p> <p>1 tell me what those are.</p> <p>2 A. These five photos right here were</p> <p>3 produced on November 22, 2005 when I and</p> <p>4 Mr. Collins and the, what's that kid's name,</p> <p>5 whatever that kid's -- I think his last name is 11:26:34</p> <p>6 Luindowski.</p> <p>7 Q. Okay.</p> <p>8 A. The kid from the Geek Squad at Best</p> <p>9 Buy. He produced these pictures that day. I</p> <p>10 believe I gave copies to Ms. Murel that day 11:26:45</p> <p>11 also. These pictures were produced that day,</p> <p>12 these top five.</p> <p>13 Q. Are those copies that we could put</p> <p>14 in as an exhibit, or are these your only --</p> <p>15 A. These are actually -- he made a 11:26:55</p> <p>16 whole bunch of copies, and some of these are</p> <p>17 probably actually the same photograph,</p> <p>18 different tints, etc., different hues. And Ms.</p> <p>19 Murel was provided those. These are the ones I</p> <p>20 got from Best Buy that day. 11:27:08</p> <p>21 Q. So we can't put those in as an</p> <p>22 exhibit?</p> <p>23 A. We can have copies made for you.</p> <p>24 MR. CAMPBELL: Why don't we put all</p> <p>25 the photos, we'll talk about them all, but 11:27:19</p>

Peter Gauthier

<p style="text-align: right;">Page 50</p> <p>1 talking. We were talking about the holidays.  2 vacations, etc. Mr. Collins looked at me and  3 said I kind of hope this shows it's not him.  4 He was referring to the video. Quite frankly,  5 that surprised me. Nobody's ever told me they 11:35:23  6 wished the person charged with the crime wasn't  7 guilty before. He told me he wished it wasn't  8 him, and he said in any event, I hope we get an  9 answer one way or the other.  10 And that was in specific reference 11:35:36  11 to -- the Geek Squad person was trying to use  12 some sort of program, whether it was Photoshop  13 or something along those lines, to enhance the  14 photos from the VHS.  15 Q. To verify -- 11:35:48  16 A. To verify, or either to verify or  17 to unverify, I guess.  18 Q. And let me just ask you, one, were  19 they able to enhance to verify?  20 A. Not greatly. I mean, again, they 11:35:57  21 changed, as you can see on the Exhibit 4.  22 Deposition Exhibit 4, the photos are different  23 hues, and he tried to do different hues and  24 tints and stuff to try and make it a clearer  25 picture. It's an old -- it was an old system 11:36:10</p>	<p style="text-align: right;">Page 52</p> <p>1 didn't fight it. He didn't -- you know. Those  2 are things that I remember about my  3 conversations with Mr. Collins.  4 Q. Just a final question, just so I  5 understand. Was anybody ever prosecuted for 11:37:31  6 the Elyria theft at Best Buy?  7 A. No.  8 Q. Okay. And why not?  9 A. To this day, I have no idea whether  10 it was Mr. Wadell or Mr. Graham or some other 11:37:41  11 individual.  12 Q. Okay.  13 A. You know, at some point in time I  14 thought about sending an investigator out to  15 talk to Mr. Wadell, but he got out of prison 11:37:52  16 shortly after I came up with that idea, and it  17 never happened.  18 Q. So based on your review of the file  19 and the interviews, review of the photos and  20 whatnot, the photograph from Best Buy resembles 11:38:05  21 both Mr. Graham and Mr. Wadell, but you just  22 can't be for certain?  23 MS. SCHUSTER: Objection.  24 Q. You can answer.  25 A. Yeah. I have no idea whether it's 11:38:17</p>
<p style="text-align: right;">Page 51</p> <p>1 that -- Multi-Plex was an old system, and it  2 just wasn't very good.  3 Q. And just to verify, the picture  4 from the Multi-Plex, either the stills or the  5 actual moving pictures, it resembled 11:36:25  6 Mr. Graham, but nobody could be for certain it  7 was him or someone else?  8 A. Correct.  9 Q. Okay. So what else did  10 Mr. Collins, do you recall him telling you at 11:36:39  11 any time?  12 A. In reference -- I asked him about  13 the EEOC complaint. Mr. Collins indicated to  14 me that he did not know anything about that  15 EEOC complaint until after the investigation in 11:36:50  16 this particular case.  17 Q. Okay.  18 A. And when ultimately I got the stuff  19 back from Parma, he came to my office. I showed  20 him the photos, and he looked at me and said 11:37:06  21 what do you need from me? I said what do you  22 mean? He goes do you need a letter dismissing  23 the case? I said no, I'll take care of that.  24 But there was no hesitation. He agreed to  25 dismissal of the case immediately. So he 11:37:19</p>	<p style="text-align: right;">Page 53</p> <p>1 Mr. Wadell or Mr. Graham, or even a third or a  2 fourth different person. I don't know. And if  3 I don't know, then I'm not going to win my case  4 at trial beyond a reasonable doubt, so I  5 dismissed the case. 11:38:29  6 Q. Thank you very much for taking the  7 time. I'm sure that there might be some  8 questions from plaintiff's counsel in our civil  9 case, but thank you for taking the time.  10 A. Sure. 11:38:39  11 EXAMINATION OF PETER GAUTHIER  12 BY MS. SCHUSTER:  13 Q. Mr. Gauthier, we've met here and we  14 met briefly on the telephone when I called to  15 ask you if you were available for deposition by 11:38:47  16 the parties and/or available for interview by  17 the parties.  18 A. Correct.  19 Q. And at that time you told me that  20 it was not your policy to speak with either 11:39:06  21 party, you were not going to speak with either  22 party, and if anybody wanted to speak with you,  23 they needed to see the prosecutor.  24 A. I don't think I said I was not  25 going to talk. I said you have to talk to my 11:39:18</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 78</p> <p>1 Q. When does the office undertake its 2 own investigations? 3 A. That's up to Mr. Will, I guess. 4 That's probably those high profile cases that I 5 talked about earlier. I don't know, honestly. 12:08:27 6 Q. So it would not be something that 7 would be done in the typical case. You would 8 not look at a case and say, gee, it would be 9 nice if Mr. So-and-so were interviewed and have 10 the Prosecutor's investigator do it? 12:08:42 11 A. No. Typically in a case when I use 12 a supervisor it's to serve a subpoena, or to 13 help me find a witness who I am unable to find. 14 Q. You mean an investigator? 15 A. I'm sorry, yes. Use an 12:08:52 16 investigator to either serve a subpoena 17 personally on somebody to ensure their 18 appearance, or to find a witness who I'm unable 19 to find myself. 20 Q. So what you would do, however, if 12:09:03 21 you felt that somebody needed to be talked to 22 is call the involved police department and ask 23 them to do it? 24 A. Correct. 25 Q. In this particular case did you 12:09:13</p>	<p style="text-align: right;">Page 80</p> <p>1 from the procedure in Cuyahoga County? 2 A. A little, I suppose. 3 Q. Do you know whether or not cases 4 are taken in one at a time or in groups? 5 A. I'm not positive. My best belief 12:10:37 6 is that they're taken in one at a time. 7 Q. Generally, it would be the case 8 that the police officers would testify to the 9 Grand Jury rather than any private witnesses? 10 A. Generally, yes. 12:10:53 11 Q. Do you know when the decision is 12 made to have private witnesses testify? 13 A. That's up to the Grand Jury 14 Prosecutor. It depends on the case. 15 Q. And the Grand Jury Prosecutor can 12:11:04 16 make that decision on his own, can he not? 17 A. I believe so. 18 Q. Do you know whether typically in a 19 non high profile case evidence is actually 12:11:26 20 presented to the Grand Jury, other than the 21 testimony of the police officer? 22 A. Evidence in terms of photographs 23 and documents? 24 Q. Documents, right. 25 A. That I don't know. That I don't 12:11:34</p>
<p style="text-align: right;">Page 79</p> <p>1 call the Elyria PD and ask them to do any 2 additional investigation? 3 A. I don't recall that I did. 4 Q. And that is something that you 5 probably would have noted in your personal 12:09:28 6 notes and would recall if you had done it? 7 A. Probably. 8 Q. Do you know who took this case into 9 the Grand Jury? 10 MR. FLANAGAN: Objection. I 12:09:42 11 instruct the witness not to answer based on 12 Grand Jury secrecy proceedings, attorney/client 13 privilege and work product. 14 Q. Do you know who is the prosecutor 15 assigned to the Grand Jury -- who was the 12:09:53 16 prosecutor assigned to the Grand Jury at the 17 time of the indictment of Michael Graham? 18 A. Yes, I do know who that was. 19 Q. And who was that? 20 A. His name is David Muhek, M-u-h-e-k. 12:10:03 21 Q. Is he still assigned to the Grand 22 Jury? 23 A. Yes. 24 Q. Are you familiar with the Grand 25 Jury procedure here in Elyria as it may differ 12:10:21</p>	<p style="text-align: right;">Page 81</p> <p>1 know. 2 Q. Did you personally meet with 3 Detective Roth or Patrolman Currier about this 4 case? 5 A. The only time I really met with 12:11:57 6 Detective Roth was to get the videotape, 7 wherever that is right now, the original 8 videotape so that I could present it to, first 9 to Best Buy for them to get, you know, the 10 Multi-Plex view off of it, to get it onto CD, 12:12:11 11 and then to have it sent to Parma, I believe. 12 And I may have contacted him other times, but 13 it was for purely administrative things like 14 that. 15 Q. At any time did you discuss with 12:12:26 16 Detective Roth whether or not he had seen the 17 video? 18 A. I don't recall. 19 Q. Do you know whether or not he was 20 able to play the video? 12:12:36 21 A. I have no idea. You know what, he 22 may have. Because I know when they gave the 23 tape to us, it was -- they only sent over a 24 copy of the relevant portion of time. So it's 25 a guess on my part, but I believe he was able 12:12:56</p>

21 (Pages 78 to 81)



<p style="text-align: right;">Page 102</p> <p>1 Q. Specifically, right.</p> <p>2 A. I don't recall him saying whether</p> <p>3 it was the hairline or the thin face, or I</p> <p>4 don't recall him saying one thing or the other.</p> <p>5 Q. Okay. If you had a question about 12:43:27</p> <p>6 the case, would you have called the Elyria PD</p> <p>7 or would you have called Mr. Collins?</p> <p>8 A. Probably Mr. Collins.</p> <p>9 Q. Do you know if the Elyria PD did</p> <p>10 any investigation in addition to whatever 12:43:57</p> <p>11 investigation Mr. Collins did?</p> <p>12 A. I don't believe so. I think their</p> <p>13 role in this was purely ministerial, you</p> <p>14 know, the collection of the evidence and</p> <p>15 keeping of the evidence and stuff like that. 12:44:09</p> <p>16 Presentation to Grand Jury if, in fact, they</p> <p>17 are the ones who did it.</p> <p>18 Q. So you were collecting the evidence</p> <p>19 from Mr. Collins, recording what they collected</p> <p>20 and seeing that it got to the Grand Jury? 12:44:21</p> <p>21 A. That would be their position, that</p> <p>22 will be their job, yeah, in this particular</p> <p>23 case. Whether they tried to contact</p> <p>24 Mr. Graham, I don't know. It might be</p> <p>25 reflected in the report. I just don't 12:44:31</p>	<p style="text-align: right;">Page 104</p> <p>1 Best Buys during that period?</p> <p>2 A. At that particular Best Buy?</p> <p>3 Q. No. Or at other -- were you aware</p> <p>4 that they were having a series of thefts during</p> <p>5 the time -- 12:46:04</p> <p>6 MR. CAMPBELL: I'm going to object</p> <p>7 as to the characterization of the evidence.</p> <p>8 A. I remember Mr. Collins telling me</p> <p>9 that Christmas time is his busy season,</p> <p>10 especially in the beginning of the year, 12:46:15</p> <p>11 January. And that most of the people that he</p> <p>12 has to fire are let go in the early part of the</p> <p>13 year, because he has to review all of the stuff</p> <p>14 from the holiday season, and most of the thefts</p> <p>15 come to light. So that his busiest part of his 12:46:27</p> <p>16 job comes in like January, February. That's</p> <p>17 when he has to fire the most people for thefts</p> <p>18 occurring over the holiday season. But it</p> <p>19 didn't sound any different than any other year.</p> <p>20 It sounds like that was a yearly thing. 12:46:42</p> <p>21 Q. And it sounds like he was talking</p> <p>22 about thefts by employees?</p> <p>23 A. Yes. And -- well, actually, he</p> <p>24 never delineated only employees. But in terms</p> <p>25 of theft by employees, the greatest period of 12:46:52</p>
<p style="text-align: right;">Page 103</p> <p>1 remember.</p> <p>2 Q. So to the extent that information</p> <p>3 was presented to the Grand Jury, it would have</p> <p>4 been the information which Mr. Collins</p> <p>5 gathered? 12:44:44</p> <p>6 MR. FLANAGAN: Objection. I</p> <p>7 instruct you not to answer the question.</p> <p>8 Q. Do you know of any information</p> <p>9 other than what Mr. Collins gathered that was</p> <p>10 presented to the Grand Jury? 12:44:53</p> <p>11 MR. FLANAGAN: Objection. I</p> <p>12 instruct the witness not to answer.</p> <p>13 Q. I take it that the Elyria PD would</p> <p>14 have relied on Mr. Collins' investigation in</p> <p>15 this particular matter? 12:45:15</p> <p>16 A. For the most part, yes. They may</p> <p>17 have -- again, whether they followed up by</p> <p>18 calling Mr. Graham and having him come in or</p> <p>19 trying to talk to him, I don't recall. But</p> <p>20 since the video was already there, and since 12:45:28</p> <p>21 the photos had already been confiscated by</p> <p>22 Mr. Collins, and since his job is actually Loss</p> <p>23 Prevention Officer, I believe he did the</p> <p>24 majority of the work in this particular case.</p> <p>25 Q. Were you aware of other thefts at 12:45:47</p>	<p style="text-align: right;">Page 105</p> <p>1 time that occurring is during the holiday</p> <p>2 season.</p> <p>3 Q. Do you recall when you had that</p> <p>4 conversation with him?</p> <p>5 A. It may have been around the 12:47:03</p> <p>6 November 22nd. Whether it was specifically</p> <p>7 that day or sometime after that, I'm pretty</p> <p>8 sure it was on November 22nd.</p> <p>9 Q. And the conversation regarding the</p> <p>10 keys, when did you have that conversation with 12:47:14</p> <p>11 him?</p> <p>12 A. That may have been a phone</p> <p>13 conversation prior to meeting with him. And I</p> <p>14 may have even gotten that information from</p> <p>15 Detective Roth about there being only like 12:47:26</p> <p>16 three keys for like every register in the</p> <p>17 entire country, which I thought was just crazy.</p> <p>18 Q. Did you mention your surprise to</p> <p>19 Mr. Collins?</p> <p>20 A. I think I probably did, yeah. 12:47:36</p> <p>21 Q. Do you recall what he said?</p> <p>22 A. I think he was similarly perturbed</p> <p>23 by that.</p> <p>24 Q. So to your understanding, he was</p> <p>25 saying that one of three keys could open every 12:47:51</p>

27 (Pages 102 to 105)

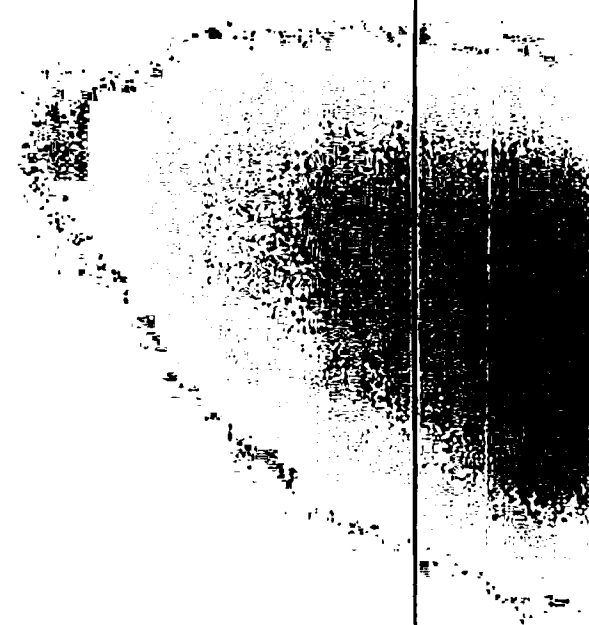
Peter Gauthier

<p style="text-align: right;">Page 106</p> <p>1 cash register. every Best Buy cash register 2 anywhere? 3 A. I believe if you had three keys, 4 and I'm not sure on the number, maybe it's 5 three. maybe it's four. I'm not positive of 12:48:07 6 the number. If you had all three of them, you 7 could probably open not only any register at 8 Best Buy, but at most of the stores in the 9 entire country. 10 Q. Did he say that those were cash 12:48:16 11 register keys. or were those keys to like open 12 the store and also cash register keys? 13 A. I don't recall. My impression was 14 cash register keys. 15 Q. I think I asked you this question, 12:48:47 16 or somebody did, but -- 17 MR. FLANAGAN: Objection. Asked 18 and answered. 19 Q. -- I'm going to do it again. Did 20 you send a subpoena to Best Buy, or was it only 12:48:58 21 the defense? 22 A. For what? When? 23 Q. For anything. In other words, I 24 think you testified that there was in your file 25 some documents which were copies of documents 12:49:13</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I don't -- I didn't make the 2 determination of what to take, leave in or take 3 out of the file. I know I prepared a form to 4 request subpoenas, but I don't believe 5 subpoenas were ever issued. 12:51:25 6 Q. Anything that is not in this file, 7 Exhibit 1, would have been -- let me start 8 over. 9 Anything that was, in fact, 10 contained in your file but is not contained in 12:51:42 11 Exhibit 1 would have been removed by you or by 12 your counsel or by someone else? 13 A. By my counsel, Mr. Flanagan. 14 Q. And did he show you what he 15 removed? 12:51:59 16 A. I think so. 17 Q. Did you -- 18 A. Quickly. 19 Q. Did you review the removed 20 documents prior to testifying? When you 12:52:08 21 reviewed the file, were the removed documents 22 in it? 23 A. I believe some of them were, at 24 least. 25 Q. Do you recall which ones? 12:52:21</p>
<p style="text-align: right;">Page 107</p> <p>1 which the defense had subpoenaed. 2 A. I know that Ms. Murel had sent a 3 subpoena to Best Buy. And I think she may have 4 also sent a copy to me. Mr. Collins gathered 5 the information that she requested, and I 12:49:27 6 believe he sent it to her, and she also sent me 7 a copy. And whether I -- the case was 8 scheduled for trial on one or two occasions 9 prior to its dismissal. I might have sent 10 trial subpoenas to witnesses. I don't recall 12:49:42 11 whether I did or not. 12 MS. SCHUSTER: Let me look through 13 this file one time. 14 A. I don't see any subpoenas in the 15 material that's included in Deposition Exhibit 12:50:50 16 1. So I may not have sent any subpoenas out. 17 Q. That would indicate to you that you 18 probably did not, am I correct? 19 A. Probably did not. 20 Q. Because in the ordinary course, if 12:51:03 21 you did send a subpoena, that copy should be in 22 the file? 23 A. Correct. 24 Q. And that would not be something 25 that you would take out of the file? 12:51:11</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I believe I looked at my notes ever 2 so quickly. Quite frankly, the only thing I 3 looked for in my notes was that date, the date 4 that we went to Best Buy. That's the only 5 thing I looked for. There were other notes 12:52:35 6 that I did not review. 7 Q. If you saw those notes, they would 8 refresh your recollection, would they not? 9 A. As to what? 10 Q. As to whatever's in them. 12:52:43 11 A. Well, I suppose. 12 Q. In other words, if you had, if you 13 noted that you had a conversation with somebody 14 on a concern day and you had forgotten, if you 15 saw your notes, it would refresh your 12:52:54 16 recollection if that occurred? 17 A. If I, in fact, chose to memorialize 18 that conversation, yes. 19 MS. SCHUSTER: I'm going to ask you 20 to produce the notes. 12:53:03 21 MR. FLANAGAN: The notes will not 22 be produced. 23 MR. CAMPBELL: You haven't even 24 issued a subpoena, so it's not even something 25 that you guys are -- 12:53:15</p>

28 (Pages 106 to 109)



Peter Gauthier

<p style="text-align: right;">Page 126</p> <p style="text-align: center;">1 CERTIFICATE</p> <p>2 The State of Ohio, )</p> <p>3 SS:</p> <p>4 County of Cuyahoga. )</p> <p>5</p> <p>6 I, Todd L. Persson, a Notary Public</p> <p>7 within and for the State of Ohio, duly</p> <p>8 commissioned and qualified, do hereby certify</p> <p>9 that the within named witness, PETER GAUTHIER,</p> <p>10 was by me first duly sworn to testify the</p> <p>11 truth, the whole truth and nothing but the</p> <p>12 truth in the cause aforesaid; that the</p> <p>13 testimony then given by the above-referenced</p> <p>14 witness was by me reduced to stenotypy in the</p> <p>15 presence of said witness; afterwards</p> <p>16 transcribed, and that the foregoing is a true</p> <p>17 and correct transcription of the testimony so</p> <p>18 given by the above-referenced witness.</p> <p>19 I do further certify that this</p> <p>20 deposition was taken at the time and place in</p> <p>21 the foregoing caption specified and was</p> <p>22 completed without adjournment.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 128</p> <p style="text-align: center;">1 SIGNATURE OF WITNESS</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 The Deposition of PETER GAUTHIER, taken</p> <p>7 in the matter, on the date, and at the time and</p> <p>8 place set out on the title page hereof.</p> <p>9 It was requested that the deposition be</p> <p>10 taken by the reporter and that same be reduced</p> <p>11 to typewritten form.</p> <p>12 It was agreed by and between counsel and</p> <p>13 the parties that the reading and signing of the</p> <p>14 transcript of said deposition, be and the same</p> <p>15 is hereby waived.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 127</p> <p>1 I do further certify that I am not</p> <p>2 a relative, counsel or attorney for either</p> <p>3 party, or otherwise interested in the event of</p> <p>4 this action.</p> <p>5 IN WITNESS WHEREOF, I have hereunto</p> <p>6 set my hand and affixed my seal of office at</p> <p>7 Cleveland, Ohio, on this <u>19th</u> day of</p> <p>8 <u>July</u>, 2007.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 <u>Todd L. Persson</u></p> <p>13 Todd L. Persson, Notary Public</p> <p>14 within and for the State of Ohio</p> <p>15</p> <p>16</p> <p>17 My commission expires July 28, 2007.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

33 (Pages 126 to 128)